

**OPENING STATEMENT OF**  
**SENATOR BENJAMIN L. CARDIN**  
**SENATE JUDICIARY COMMITTEE**  
**HEARING**  
**“CLOSING THE JUSTICE GAP:**  
**PROVIDING CIVIL LEGAL ASSISTANCE TO LOW-INCOME AMERICANS”**

**Thursday, May 22, 2008**

The Committee will come to order. I want to thank Chairman Leahy for allowing me to chair this Senate Judiciary Committee hearing today, entitled “Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans.”

Today’s hearing will highlight the growing access to justice gap, and to explore what actions Congress can take to remedy this critical problem.

Access to justice for Americans is critical to justice in a democracy. When federal judges take their judicial oath prescribed in the United States Code, they swear to “administer justice without respect to persons, and do equal right to the poor and to the rich...” I am gravely concerned that our current civil justice system makes it difficult for judges to perform their proper function, when either one of both of the parties do not have access to a lawyer or legal assistance for serious cases.

Let us begin with some statistics. Americans are eligible for civil legal assistance provided through Legal Services Corporation (LSC) funded programs if their household income does not exceed 125% of the federal poverty guidelines. In 2007, 125% of the federal poverty guidelines amounted to \$25,813 for a household of four. Fifty million Americans are therefore eligible to receive civil legal aid for LSC-funded programs – including 13 million children, which is one in five children in the United States.

How do we measure equal justice under the law?

LSC issued a comprehensive report in 2005 entitled “Documenting the Justice Gap in America – The Current Unmet Civil Legal Needs of Low-Income Americans.” The report found that half of all individuals who qualify for and actually seek assistance from Corporation-funded programs are denied help because of the lack of resources. This means that LSC turns away one million cases per year due to lack of funding. This figure does not include: those who do not seek out help because they believe they will be turned away; those who only received limited advice, but require full representation to address their legal problem; and those that are turned away from non-LSC-funded legal aid providers.

A 1993 American Bar Association study and recent state studies consistently report that – despite the combined efforts of the federal program, state, local, and private funding, and pro bono support – between 70 and 80 percent of the legal needs of the poor are unmet.

Studies have shown that poor households will on average face from 1 to 3 legal problems a year. This lack of civil legal assistance disproportionately affects those groups most in need of assistance: low-income individuals, minorities, the elderly, as well as individuals living in rural areas or on Native American reservations.

What happens when individuals do not have access to civil legal assistance? I submit that inevitably justice suffers. Judges are put in the position of trying to provide some assistance and advice – while remaining impartial – to one or two unrepresented parties before them. Social service agencies absorb additional costs from those that are unfairly denied health care or social services benefits. Neighborhoods and communities are damaged due to unjust evictions. Families are torn apart, and domestic violence and abuse continues unabated. Public health and law enforcement costs rise. The rule of law is undermined, and Americans come to believe that justice is only for the rich, not the poor.

Let me also say a word about the Legal Services Corporation. Of course any government program can be made better. And that does not exclude the operations of the legislative branch of government. Congress itself has not done its job here, as the last authorization for LSC lapsed during the presidency of Jimmy Carter. I am pleased that LSC has taken a number of strong steps to address the recent problems identified in the GAO reports. I want to work with my colleagues to strengthen and improve the LSC. We need to comprehensively reexamine the LSC to meet the challenges of the 21<sup>st</sup> century, which will include examining the funding authorization levels for LSC and the current restrictions on the use of LSC funds.

But I must tell you that the funding for LSC has been anemic at best. The value in real dollars of the funding appropriated by Congress to LSC has declined dramatically over the past quarter-century. Congress created a “minimum access level” of funding for LSC in 1981 of \$321 million, which is the level arguably needed to provide a minimum level of access to legal aid in the United States. Adjusted to inflation, this level would have to be over \$687 million in 2005 dollars. However, LSC was only allocated \$348 million by Congress in FY 2007.

Let me also personally thank Senator Kennedy for his tireless work on behalf of civil rights. I will include in the record the letter to the Appropriations Committee which has been circulated by Senator Kennedy, and signed by a large, bipartisan group of Senators, calling for a minimum of \$400 million in LSC funding for Fiscal Year 2009. Senator Barbara Mikulski, the Chairman of the Appropriations Subcommittee on Commerce, Justice and Science has also been a strong advocate for LSC funding. And Senator Tom Harkin has been a steadfast friend of LSC, as a former Legal Aid attorney and a senior member of the Health, Education, Labor, and Pensions (HELP) Committee,

which oversees the LSC program. Senators Mikulski and Harkin have been tireless advocates for LSC, and I look forward to working with them in my role on the Judiciary Committee in strengthening access to justice and civil legal assistance for low-income Americans.

Let me close with a final statistic: according to one study, each Legal Aid attorney serves over 6,800 people, while there is one private attorney for every 525 people in the nation.

This is not “Equal Justice Under Law”, as promised by the etching at the entrance to the United States Supreme Court, which sits just across the street from us. Nor have we as a nation fully “established justice,” as called for in the preamble to the Constitution. The next Congress, and a new Administration, must take aggressive action to close this justice gap, and I look forward to working with my colleagues on this issue.